

Clearwater Forest Industries, Inc.

Draft Title V Permit to Operate No. R10T5-ID-00-01 Response to Comments

A. Provisions of the Draft Permit Changed in the Final Permit and Reason for the Change

In the final permit, EPA changed four provisions of the draft permit. All four changes were made to clarify the source's reporting obligations:

1. In Section V.C.(a), the draft permit required that reports of any required monitoring be submitted every six months from the date of issue of the permit. In the final permit, EPA retained this requirement but made it more specific and clarified the permittee's obligations by defining each six month reporting period as being from January 1 to June 30 and from July 1 to December 31, except that the first reporting period will begin on the effective date of the permit and end on June 30. The permit also now clarifies that all reports shall be postmarked by the 30th day following the end of the reporting period.
2. Section V.C.(c) in the final permit now specifies the telephone and facsimile numbers the source shall use to report certain permit deviations to EPA. The numbers were left off of the draft permit.
3. In Section VI.B(a), the draft permit required the permittee to submit an annual compliance certification on the anniversary of the permit issuance date. In the final permit, EPA retained the annual compliance certification requirement but made the reporting coincide with the semi-annual reporting required in Section V.C.(a) by requiring each compliance certification be postmarked by January 30 of each year and cover the previous calendar year except that the first certification will cover the period from the effective date of the permit through December 31.
4. In Section X.I.(b), the draft permit contained a specific date for when the permittee's renewal permit application is due. The final permit has been revised to instead include the rule language which requires that the renewal application be submitted no sooner than 18 months prior to and no later than 6 months prior to expiration of the permit.

B. Response to Comments Raised During the Public Comment Period

EPA received public comments from the Idaho Department of Environmental Quality (IDEQ), the U.S. Department of Justice (DOJ), and the Nez Perce Tribe (the Tribe). IDEQ is also an "affected State" as defined by 40 CFR part 71. EPA must notify any affected State in writing of any refusal by EPA to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the EPA's reasons for not accepting any such recommendation. The EPA is not required to accept recommendations that are not based on applicable requirements or the requirements of part 71. This response to comments constitutes EPA's notification to the affected State of any refusal by EPA to accept all

recommendations.

The complete text of all comments is available in the docket at EPA Region 10. Following is a summary of each comment submitted followed by EPA's response:

Comments submitted by the Idaho Division of Environmental Quality

1. IDEQ asserts that EPA's assumption of authority to issue permits to this source is unwarranted and ignores "the subsequent cession of tribal land that occurred pursuant to the Agreement of May 1, 1893". IDEQ asks that EPA enter into a Memorandum of Understanding (MOU) establishing procedures for issuing joint or dual permits to this source.

EPA's Response: EPA's position is that the State has not been approved to issue an operating permit that meets the requirements of Title V of the Clean Air Act within the 1863 Nez Perce Reservation. Since the EPA approved IDEQ Title V program (61 FR 64622, December 6, 1996) does not extend into the 1863 Reservation, EPA is not able to issue a "joint" permit that would recognize some State authority over the source, since the IDEQ permit would have no effect under the Clean Air Act. EPA has negotiated an MOU with IDEQ which factually recites the Clean Air Act authorities and the positions of the State of Idaho and the United States. The MOU provides for EPA to issue Clean Air Act permits to sources within the Nez Perce Reservation and clarifies that IDEQ is not required to issue permits in order to meet the terms of the IDEQ 40 CFR part 70 operating permits program that EPA has approved. This approach will provide for efficient implementation of the Clean Air Act, avoid duplication of efforts between EPA and IDEQ, and avoid placing permittees in the situation where they are paying fees to both EPA and IDEQ. An additional, more comprehensive MOU is being considered by the State, EPA and the Tribe to address airshed management issues.

Comments submitted by the U. S. Department of Justice

2. DOJ submitted comments to EPA confirming that the U. S. Attorney's Office for the District of Idaho exercises criminal jurisdiction as defined in 18 USC Sec. 1151(a) within the exterior boundaries of the 1863 Nez Perce Reservation.

EPA's Response: EPA agrees with DOJ's recognition of federal jurisdiction within the 1863 Nez Perce Reservation.

Comments submitted by the Nez Perce Tribe

3. The Tribe expressed concern that the State of Idaho or others might question EPA's authority to issue the permit and might allege that the Nez Perce Reservation had been diminished. The Tribe asked that EPA reject any such theories and support the United States' long-standing recognition of federal jurisdiction within the 1863 Nez Perce Reservation.

EPA's Response: EPA agrees that it has the authority to issue Clean Air Act operating permits to facilities located within the boundaries of the Nez Perce Reservation as described in the 1863 Nez Perce Treaty. Using terminology from EPA's regulations for the federal operating permits

program in 40 CFR part 71 and in EPA's interim approval of the state's operating permits program under 40 CFR part 70, this means that EPA believes all sources within the exterior boundaries of the 1863 Nez Perce Reservation are located in "Indian Country", as that term is defined in 18 USC Section 1151. As such, EPA's position is that the State has not been approved to issue an operating permit that meets the requirements of Title V of the Clean Air Act within the boundaries of the Nez Perce Reservation.